

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**  
**Nashville, Tennessee**

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**In Re: Implementation of Federal )  
Communications Commission's )  
Triennial Order (Phase II - Local Circuit )  
Switching for Mass Market Customers) )**

T.R.A. DOCKET ROOM  
**Docket No.: 03-00491**

**AT&T'S OBJECTIONS TO BELL SOUTH'S  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (1-21)**

AT&T Communications of the South Central States, LLC ("AT&T"), pursuant to the Order on October 21, 2003 Status Conference issued by Director Jones of the Tennessee Regulatory Authority ("TRA") (hereinafter "*Procedural Order*"), Rule 26.02, 34.01, and 34.02 of the Tennessee Rules of Civil Procedure, objects generally and specifically to BellSouth Telecommunications, Inc.'s (hereinafter "BellSouth") First Request for Production of Documents to AT&T Communications of the South Central States, LLC, served on October 24, 2003, as described below.

**OVERVIEW**

AT&T files these objections for purposes of complying with the *Procedural Order*. These objections are preliminary in nature. Should additional grounds for objection be discovered as AT&T prepares its responses to any discovery, or at any time prior to hearing, AT&T reserves the right to supplement, revise, and/or modify these objections.

**GENERAL OBJECTIONS**

AT&T makes the following general objections to the Requests which will be incorporated by reference into AT&T's specific responses when AT&T responds to the Requests.

## **1. Definitions**

A. AT&T objects to the lengthy "Definitions" section of BellSouth's First Requests for Production of Documents to AT&T to the extent that such terms are overly broad, unduly burdensome, irrelevant, oppressive and not reasonably calculated to lead to the discovery of admissible evidence pursuant to the *Procedural Order*, Rule 1220-1-2.11 of the Rules of Practice and Procedure of the Tennessee Regulatory Authority and Rule 26.02 of the Tennessee Rules of Civil Procedure. Furthermore, AT&T objects to the "Definitions" section to the extent that it utilizes terms that are subject to multiple interpretations, but are not properly defined or explained for purposes of these Requests.

B. AT&T objects to the "Definitions" section of BellSouth's First Requests for Production to AT&T to the extent that the definitions operate to include the discovery of documents and other information protected by attorney/client privilege, the work product doctrine, or any other applicable privilege.

C. AT&T objects to the "Definitions" section of BellSouth's First Requests for Production to AT&T to the extent that the definitions operate to include the discovery of information and/or materials containing the mental impressions, conclusions, opinions or legal theories of any attorney or other representative of AT&T concerning the subject of the proceeding, and prepared and developed in anticipation of litigation pursuant to Rule 26.02(3) of the Tennessee Rules of Civil Procedure without the requisite showing from BellSouth that it has substantial need of the requested information and materials in the preparation of its case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

D. AT&T objects to the "Definitions" section of BellSouth's First Requests for Production to AT&T to the extent that the definitions operate to impose discovery obligations on AT&T inconsistent with, or beyond the scope of, what is permitted under the *Procedural Order* and the applicable Tennessee Rules of Civil Procedure.

E. AT&T objects to the "Definitions" section of BellSouth's First Requests for Production to AT&T to the extent that the definitions operate to seek discovery of documents and/or materials other than those subject to the jurisdiction of the TRA pursuant to the FCC's Triennial Review Order and applicable Tennessee law.

F. AT&T objects to the "Definitions" section of BellSouth's First Requests for Production to AT&T to the extent that the requests purport to seek disclosure of information that is proprietary confidential information

or a "trade secret" without the issuance of an appropriate Protective Order pursuant to Rule 26.03 of the Tennessee Rules of Civil Procedure and Rule 1220-1-2.11 of the Rules of Practice and Procedure of the TRA.

G. AT&T objects to the definitions of "you" and "your," "AT&T," and "person" to the extent that the definitions include natural persons or entities which are not parties to this proceeding, not subject to the jurisdiction of the TRA, and not subject to the applicable discovery rules. Subject to the foregoing, and without waiving any objection, general or specific, unless otherwise ordered, responses will be provided on behalf of AT&T Communications of the South Central States, LLC, which is a certificated carrier authorized to provide regulated communications services in Tennessee and which is a party to this proceeding.

## **2. Instructions**

A. AT&T objects to the "General Instructions" section of BellSouth's First Requests for Production to AT&T to the extent that the "instructions" operate to impose discovery obligations on AT&T inconsistent with, or beyond the scope of, what is permitted under the *Procedural Order*, Rule 1220-1-2.11 of the Rules of Practice and Procedure of the TRA and the applicable Tennessee Rules of Civil Procedure. Subject to the foregoing, and without waiving any objection, responses will be provided in accordance with the *Procedural Order*, Rule 1220-1-2.11 of the Rules of Practice and Procedure of the TRA, and the applicable Tennessee Rules of Civil Procedure.

B. AT&T objects to the "General Instructions" section of BellSouth's First Requests for Production to AT&T to the extent that the "instructions" operate to seek disclosure of documents or other materials containing the mental impressions, conclusions, opinions, or legal theories of any attorney or other representative of AT&T relating to the subject of litigation without the requisite showing under Rule 26.02(3) of the Tennessee Rules of Civil Procedure.

C. AT&T objects to the "General Instructions" section of BellSouth's First Requests for Production to AT&T to the extent that the "instructions" operate to seek disclosure of "all" documents, materials or information in AT&T's "possession, custody or control" and to the extent that said "instruction" requires AT&T to provide information or materials beyond its present knowledge, recollection or possession. With respect thereto, AT&T has employees located in many different locations in Tennessee and other states. In the course of conducting business on a nationwide basis, AT&T creates numerous documents that are not subject to either the TRA or FCC record retention requirements. These documents are kept in numerous locations and frequently are moved from location to

location as employees change jobs or as business objectives change. Therefore, it is impossible for AT&T to affirm that every responsive document in existence has been provided in response to all Requests. Instead, where provided, AT&T's responses will provide all nonprivileged and otherwise discoverable information obtained by AT&T after a reasonable and diligent search conducted in connection with those Requests. Such search will include only a review of those files that are reasonably expected to contain the requested documents and/or information. To the extent that the "instructions" require more, AT&T objects on the grounds that compliance would be unduly burdensome, expensive, oppressive, or excessively time consuming to provide such responsive information.

### **3. General Objections to Requests**

A. AT&T objects to BellSouth's First Requests for Production to AT&T to the extent that the requests are overly broad, unduly burdensome, irrelevant, oppressive and not reasonably calculated to lead to the discovery of admissible evidence pursuant to the *Procedural Order*, Rule 1220-1-2.11 of the Rules of Practice and Procedure of the TRA and Rule 26.02 of the Tennessee Rules of Civil Procedure.

B. AT&T objects to BellSouth's First Requests for Production to AT&T to the extent that the requests purport to seek discovery of materials and/or information protected by attorney/client privilege, the work product doctrine, or any other applicable privilege.

C. AT&T objects to BellSouth's First Requests for Production to AT&T to the extent that the requests purport to seek discovery of information and/or materials containing the mental impressions, conclusions, opinions or legal theories of any attorney or other representative of AT&T concerning the subject of the proceeding and prepared and developed in anticipation of litigation pursuant to Rule 26.02(3) of the Tennessee Rules of Civil Procedure without the requisite showing from BellSouth that it has substantial need of the requested information and materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

D. AT&T objects to BellSouth's First Requests for Production to AT&T to the extent that the requests purport to impose discovery obligations on AT&T inconsistent with, or beyond the scope of, what is permitted under the *Procedural Order*, Rule 1220-1-2.11 of the Rules of Practice and Procedure of the TRA and the applicable Tennessee Rules of Civil Procedure.

E. AT&T objects to BellSouth's First Requests for Production to AT&T to the extent that the requests purport to seek discovery of documents

and/or materials other than those subject to the jurisdiction of the TRA pursuant to the FCC's Triennial Review Order and applicable Tennessee law.

F. AT&T objects to BellSouth's First Requests for Production to AT&T to the extent that the requests purport to seek disclosure of information that is proprietary confidential information without the issuance of an appropriate Protective Order pursuant to Rule 26.03 of the Tennessee Rules of Civil Procedure and Rule 1220-1-2.11 of the Rules of Practice and Procedure of the TRA.

G. AT&T objects to all requests which require the production of materials and/or information which is already in the public domain, or otherwise on record with the TRA or the Federal Communications Commission ("FCC").

H. AT&T objects to BellSouth's First Requests for Production to AT&T to the extent that the requests seek materials or other documents containing information relating to facts known and opinions held by experts acquired and/or developed in anticipation of litigation or for hearing and outside the scope of discoverable information pursuant to Rule 26.02(4) of the Tennessee Rules of Civil Procedure.

I. Pursuant to the *Procedural Order*, the Triennial Review Order, and Rule 26.03 of the Tennessee Rules of Civil Procedure, to the extent that BellSouth's Requests request specific financial, business or proprietary information regarding AT&T's economic business model, AT&T objects to providing or producing any such information on the grounds that those requests presume that the market entry analysis is contingent upon AT&T's economic business model instead of the hypothetical business model contemplated by the Triennial Review Order.

## **SPECIFIC OBJECTIONS TO REQUEST FOR PRODUCTION**

POD 1: Produce all documents identified in response to BellSouth's First Set of Interrogatories.

Objection: AT&T specifically objects to this request to the extent that it is overly broad, unduly burdensome, irrelevant, oppressive and not reasonably calculated to lead to the discovery of admissible evidence pursuant to the *Procedural Order* and Rules 26.02, 34.01, and 34.02 of the Tennessee Rules of Civil Procedure and Rule 1220-1-2.11 of the Rules of Practice and Procedure of the TRA.

POD 2: Produce every business case in your possession, custody or control that evaluates, discusses, analyzes or otherwise refers or relates to the offering of a qualifying service in the State of Tennessee.

Objection: AT&T objects to this request to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence.

Pursuant to the *Procedural Order*, Rule 1220-1-2.11 of the Rules of Practice and Procedure of the TRA, the Triennial Review Order, Rules 26.01 and 34.01 Tennessee Rule of Civil Procedure, to the extent that this request seeks specific financial, business or proprietary information regarding AT&T's economic business model, AT&T objects to providing or producing any such information on the grounds that those requests presume that the market entry analysis is contingent upon AT&T's economic business model instead of the hypothetical business model contemplated by the Triennial Review Order. The Triennial Review Order explicitly contemplates that in considering whether a competing carrier economically can compete in a given market without access to a particular unbundled network element, the Commission must consider the likely revenues and costs associated with the given market based on the *most efficient business model* for entry rather than to a *particular carrier's business model*. TRO at ¶326. In particular, the FCC stated:

In considering whether a competing

carrier could economically serve the market without access to the incumbent's switch, the state commission must also consider the likely revenues and costs associated with local exchange mass market service . . . The analysis must be based on the *most efficient business model* for entry rather than to any *particular carrier's business model*.

Id. [emphasis added]. Additionally, with respect to economic entry, in ¶517, the FCC stated that “. . . [t]he analysis must be based on the most efficient business model for entry rather than to any particular carrier's business model.” Furthermore, in Footnote 1579 of Paragraph 517, the FCC clarified that “. . . [s]tate commissions should not focus on whether competitors operate under a cost disadvantage. State commissions should determine if entry is economic by conducting a business case analysis for an *efficient entry*.” [emphasis added].

In addition to these statements, the FCC also made numerous other references to the operations and business plans of an efficient competitor, specifically rejecting a review of a particular carrier's business plans or related financial information. See, ¶84, Footnote 275 (“Once the UNE market is properly defined, impairment should be tested by asking whether a *reasonable efficient CLEC* retains the ability to compete even without access to the UNE.”) (citing BellSouth Reply, Attachment 2, Declaration of Howard A. Shelanski at ¶2(emphasis added)). See also, TRO at ¶115; ¶469; ¶485, Footnote 1509; ¶517, Footnote 1579; ¶519, Footnote 1585; ¶520, Footnotes 1588 and 1589; ¶581, and Footnote 1788.<sup>1</sup>

Accordingly, the FCC's TRO specifically contemplates the consideration of financial and related information of an *efficient “model” competitor* and not that of AT&T or any other *particular competitor*. As a result,

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<sup>1</sup> For the TRA's convenience, please see Attachment 1 to AT&T's Objections which sets forth the text of these relevant Paragraphs and Footnotes from the TRO. *Complete text of the Triennial Review Order is available @ [www.fcc.gov](http://www.fcc.gov).*

discovery of AT&T financial information or business plans will not lead to the discovery of admissible evidence in this proceeding.

POD 3: Produce all documents referring or relating to the average monthly revenues you receive from end user customers in Tennessee to whom you only provide qualifying service.

Objection: AT&T incorporates by this reference its Objection to POD No. 2 as if fully set forth.

POD 5: Produce all documents referring or relating to the average monthly revenues you receive from end user customers in Tennessee to whom you only provide non-qualifying service.

Objection: AT&T incorporates by this reference its Objection to POD No. 2 as if fully set forth.

POD 6: Produce all documents referring or relating to the average monthly revenues you receive from end user customers in Tennessee to whom you provide both qualifying and non-qualifying service.

Objection: AT&T incorporates by this reference its Objection to POD No. 2 as if fully set forth.

POD 9: Produce all documents referring or relating to the average acquisition cost for each class or type of end user customer served by AT&T, as requested in BellSouth's First Set of Interrogatories, No. 34.

Objection: AT&T incorporates by this reference its Objection to POD No. 2 as if fully set forth.

POD 10: Produce all documents referring or relating to the typical churn for each class or type of end user customer served by AT&T, as requested in BellSouth's First Set of Interrogatories, No. 35.

Objection: AT&T incorporates by this reference its Objection to POD No. 2 as if fully set forth.



POD 13: Produce all documents referring or relating to the cost of capital used by AT&T in evaluating whether to offer a qualifying service in a particular geographic market.

Objection: AT&T incorporates by this reference its Objection to POD No. 2 as if fully set forth.

POD 14: Produce all documents referring or relating to the time period used by AT&T in evaluating whether to offer a qualifying service in a particular geographic market (e.g., one year, five years, ten years or some other time horizon over which a project is evaluated)?

Objection: AT&T incorporates by this reference its Objection to POD No. 2 as if fully set forth.

POD 15: Produce all documents referring or relating to your estimates of sales expense when evaluating whether to offer a qualifying service in a particular geographic market.

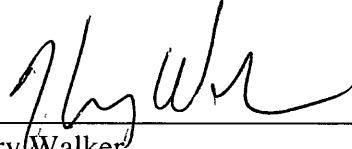
Objection: AT&T incorporates by this reference its Objection to POD No. 2 as if fully set forth.

POD 16: Produce all documents referring or relating to your estimates of general and administrative (G&A) expenses when evaluating whether to offer a qualifying service in a particular geographic market.

Objection: AT&T incorporates by this reference its Objection to POD No. 2 as if fully set forth.


SUBMITTED this 6th day of November, 2003.

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 6, 2003, a copy of the foregoing document was serviced on the parties of record, via US mail:

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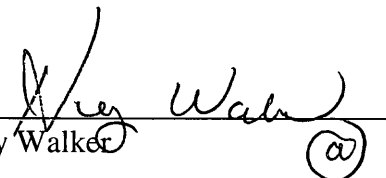
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